

To: Johnson, Kathleen[Johnson.Kathleen@epa.gov]
From: Reyes, Deldi
Sent: Mon 8/11/2014 5:57:16 PM
Subject: RE: Confidential: Summary of research into corrective action at Exide

Do you want me to offer to set up a follow up discussion?

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From: Johnson, Kathleen
Sent: Monday, August 11, 2014 10:56 AM
To: Minor, Dustin; Sugerman, Rebecca; Scott, Jeff; Barhite, Steven
Cc: Moore, Letitia; Jones, Joel E.; Lyons, John; Huettelman, Tom; Reyes, Deldi; Schofield, John; Salyer, Kathleen
Subject: RE: Confidential: Summary of research into corrective action at Exide

Great summary! I spoke with Paul Kewin on Friday (DTSC enforcement). Although he is not directly involved with the permitting aspect, he said a critical topic was financial assurance for closure/post-closure vs corrective action vs Off-site cleanup. If I understood correctly, the FA for the first two would be covered by the permit, but not the off-site work. The fact that Exide was constructed on top of a pre-existing contaminated site seems to be relevant in all of this. There is an ongoing discussion between DTSC and Exide about FA for these various “buckets”.

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From: Minor, Dustin

Sent: Monday, August 11, 2014 10:44 AM

To: Sugerman, Rebecca; Johnson, Kathleen; Scott, Jeff; Barhite, Steven

Cc: Moore, Letitia; Jones, Joel E.; Lyons, John; Huettelman, Tom; Reyes, Deldi; Schofield, John; Salyer, Kathleen

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CONFIDENTIAL

ATTORNEY WORK PRODUCT

ATTORNEY CLIENT COMMUNICATION

Rebecca,

Thank you for the quick and excellent summary. The facts are very helpful.

Is there a follow up meeting scheduled to discuss our role at Exide?

It is worth noting that the lead levels are generally below the SF removal trigger levels. I am copying Kathleen Salyer as well who just started as the Assistant Director for the removal branch in SFD. John and I will update Kathleen on our discussions to date.

Dusty

Dustin F. Minor

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From: Sugerman, Rebecca

Sent: Monday, August 11, 2014 10:30 AM

To: Johnson, Kathleen; Scott, Jeff; Barhite, Steven

Cc: Moore, Letitia; Jones, Joel E.; Lyons, John; Huetteman, Tom; Reyes, Deldi; Minor, Dustin; Schofield, John

Subject: Confidential: Summary of research into corrective action at Exide

CONFIDENTIAL

ATTORNEY WORK PRODUCT

ATTORNEY CLIENT COMMUNICATION

I reviewed DTSC's Exide files with several goals in mind: (1) determine if there is a RCRA hook for corrective action off-site; (2) ground-truth some of the facts quoted by the LA County counsel on the other week; and (3) get a sense of DTSC's activities at the site.

My general conclusion is that DTSC has the corrective action piece in hand. They have an order in place and are in regular communication with Exide about next steps. While the correspondence indicates (and Margarita Padilla at the CA AG's office says) that getting Exide to do the work is like pulling teeth, DTSC is staying persistent and imposing requirements.

Side note re Financial Assurance: as part of the permit process, Exide has established financial assurance in the form of an insurance policy, the current face amount (as of February 2014 submittal) is \$10,629,790. DTSC would like them to update this number, though I don't see DTSC's target number anywhere.

(1) RCRA Jurisdiction

Exide generates several RCRA hazardous wastes, including a hazardous flue dust (RCRA K069 – emission control dust from secondary lead smelting). While current practices supposedly keep this waste onsite, there is evidence in the history that dust from the site goes offsite, so there is clear RCRA jurisdiction for offsite impacts.

As an interim status facility, Exide is on the hook for corrective action. The RCRA corrective action requirements apply to the facility and also to corrective actions beyond the facility's property boundary, where necessary to protect human health and the environment. DTSC and Exide signed a Corrective Action and Consent Order in 2002 which has a lot of the components of our 3008(h) order (corrective action at a facility in interim status) and outlines the requirements for corrective action at the facility. The order cites to their authority under CA Health and Safety Code sections 25187 (general enforcement provision, plus authority to issue corrective action orders at a hazardous waste facility), 25187.1 (imminent and substantial endangerment), and 25200 (authority to issue permits). To date when DTSC orders Exide to perform corrective action it is pursuant to this 2002 order/agreement.

In terms of our potential authorities, EPA could use 7003 (ISE) or 3008(h) (corrective action for a facility in interim status) to order corrective action at or around this site since there is evidence of offsite transfer of RCRA hazardous waste from the facility, though it would be duplicative of DTSC's actions.

(2) Facts about current corrective action activities

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Overview: Exide has conducted multiple sampling events, including soils at surrounding residences and dust at other areas around the facility. I can provide more detail upon request regarding the non-residential sampling and removals, but it seems like folks are most interested in the residential sampling, summarized here.

DTSC and Exide are going back and forth about the correct screening levels at the residences, whether composite or discrete samples are appropriate, and whether it's worth looking to lead-based paint as a source at the residences sampled (Exide says yes, DTSC says no). Exide has agreed to soil removal at two residences, where children and/or pregnant women reside. Exide has also agreed to additional sampling in the NAA and SAA as well as an expanded assessment area. These workplans were

conditionally approved by DTSC the end of June 2014. In July 2014 DTSC approved Exide's workplan for soil removal at the 2 residences identified. DTSC just issued a "Work Notice" that the work is to take place this week, August 11 - 18. Exide is also required to conduct blood level testing, but I didn't dig into this.

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Recent Corrective Action in More Detail

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In November 2013 Exide conducted sampling at DTSC's direction at residential properties in the general vicinity of the Exide facility. The sampling took place in areas determined by DTSC based on previously approved air modeling. The Northern Assessment Area (NAA) (19 properties) for soil sampling, located in Boyle Heights and East Los Angeles, was established based on the maximum exposed individual resident (MEIR) for arsenic emissions, while the Southern Assessment Area (SAA) (20 properties), located in Maywood, was based on the MEIR for lead emissions. Exide also sampled 19 properties in a background area, selected in Long Beach and proximate to freeways, industrial areas and a sizable rail yard with an intermodal facility and switching yard.

Exide sampled at three depth intervals: 0-1 inch, 1 – 3 inches, and 3 – 6 inches bgs.

The soils in the Northern and Southern Assessment Areas had lead concentrations above background and the DTSC soil screening level of 80 mg/kg at all three depth intervals. Though DTSC and Exide agreed on the 80 mg/kg soil screening level (documented in an Exide Work Plan as well as DTSC's November 4, 2013 Stipulation and Order (a settlement agreement like our CA/FOs)), in its report Exide compared the results to a 400 mg/kg California Department of Public Health hazard level for bare soils where children play, and a hazard level of 1000 mg/kg for all soils. In recent correspondent DTSC redirects Exide to the 80 mg/kg. Exide is using the 400 mg/kg level to say that further residential sampling is not needed. DTSC is working to hold Exide to using the 80 mg/kg soil screening level to determine where further investigation is needed. Last I saw Exide was proposing 200 mg/kg.

The report says the samples were collected from five locations at each property, and three five-part field composited soil samples per property were generated from each depth (0-1", 1"-3", and 3"-6").

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Results of Residential Soil Sampling

Median, max soil levels for lead:

0–1 inch: NAA - 162 mg/kg, 342 mg/kg; SAA - 134 mg/kg, 178 mg/kg.

1-3 inches: NAA- 177 mg/kg, 454 mg/kg; SAA - 153 mg/kg, 355 mg/kg.

3-6 inch: NAA – 191 mg/kg, 582 mg/kg; SAA – 136 mg/kg, 305 mg/kg.

One property in NAA had 2030 mg/kg lead in the 3 – 6 inch interval. They had the lab analyze three additional aliquots and got 419, 385 and 381 mg/kg, so they say the original number was anomalous and not representative. That property had lead at 342 mg/kg in the 0-1 inch interval, and 454 mg/kg in the 1-3 inch.

(3) DTSC's most recent activities at the site

In March 2014 DTSC ordered Exide to submit workplans that address the following items: (1) delineate the concentrations of lead above 80 mg/kg both vertically and horizontally within the NAA and SAA and at one of the schools; (2) delineate concentrations of lead above 80 mg/kg both vertically and horizontally in areas outward to at least double the sample areas of the NAA and SAA; (3) interim measures under the 2002 corrective action order to mitigate the potential threat from exposure to lead at those properties exceeding 80 mg/kg where children and/or pregnant women are occupants, and also address those properties where concentrations of lead found in soils may represent a potential threat to human health and the environment.

In June 2014 DTSC conditionally approved Exide's workplan to further delineate lead concentrations at the NAA and SAA, as well as an Expanded Assessment Area to include 82 properties in the north and 62 in the south.

Most recently (August 2014), DTSC issued a work notice re "soil removal work activities." For August 11-18, 2014. This appears to be for removing soil at the two residential properties.

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Please let me know if I missed an area that needs research, or if you'd like more info about any of the above.

Rebecca Sugerman

Assistant Regional Counsel

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